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6 and BANK OF AMERICA, N.A.
(erroneously sued as "FIA Card Services,
7 N.A.")

8 UNITED STATES DISTRICT COURT
9
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SAM ATHERTON

12 Plaintiff,

13 vs.

14 BANK OF AMERICA CORPORATION,
15 FIA CARD SERVICES, N.A.,

16 Defendant.

Case No. **'15CV1030 H NLS**

[Removal from Superior Court of
California, County of San Diego, Case
No. 37-2015-00011831-CL-MC-CTL]

**NOTICE OF REMOVAL OF CIVIL
ACTION UNDER 28 U.S.C. § 1441(a)**

[FEDERAL QUESTION]

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendants Bank of America Corporation and Bank of America, N.A. (erroneously sued as “FIA Card Services, N.A.”)¹ (collectively “Defendants”) hereby remove this action described below from the Superior Court of California for the county of San Diego to the United States District Court for the Southern District of California, pursuant to Sections 1331 and 1441 of Title 28 of the United States Code (“U.S.C.”). The removal is based on the following:

**I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT
MATTER JURISDICTION PURSUANT TO 28 U.S.C. §§ 1331 AND 1441**

1. On April 8, 2015, Plaintiff Sam Atherton filed a complaint in the Superior Court of California for the County of San Diego, entitled *Atherton v. Bank of America Corporation et al.*, Case No. 37-2015-00011831-CL-MC-CTL (hereinafter the “State Court Action”). The Complaint alleges causes of action for (1) Violation of the Federal Fair Debt Collection Practices Act (“FDCPA”), 15 USC §§ 1692 *et seq*; and (2) Violation of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), California Civil Code §§ 1788, *et seq*. The Complaint, Summons, and other State Court Action documents are attached hereto as **Exhibit A**, as required by 28 U.S.C. §1446(a).

2. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(a) in that it is a civil action arising under the laws of the United States, specifically the FDCPA.

3. This Court also has supplemental jurisdiction over Plaintiff’s RFDCPA claim as this claim arises from the same core operative facts relating to the alleged

¹ Although Plaintiff has named “FIA Card Services, N.A.” as the defendant in his Complaint, FIA Card Services, N.A. merged into and with Bank of America, N.A., effective October 1, 2014.

1 violations of the FDCPA. Accordingly, Plaintiff's state law claim is related to
2 Plaintiff's federal question claim, and thereby forms a part of the same case and
3 controversy pursuant to 28 U.S.C. § 1367(a).

4 **II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE**
5 **SATISFIED**

6 1. Defendants were served with the Complaint on April 9, 2015. This
7 Notice of Removal is timely in that it is filed within thirty days after receipt by the
8 Defendants of a copy of the initial pleading setting forth the removable claim. *See* 28
9 U.S.C. § 1446(b).

10 2. The Superior Court of California for the County of San Diego is located
11 within the United States District Court for the Southern District of California. Thus
12 venue is proper in this Court because it is the "district and division embracing the
13 place where such action is pending." 28 U.S.C. § 1441(a).

14 3. In compliance with 28 U.S.C. § 1446(d), Defendants will serve on
15 Plaintiff and will file with the Clerk of the Superior Court for the County of San
16 Diego, a written "Notice to the Clerk of the Superior Court of the County of San
17 Diego and Notice To Adverse Parties of Filing of Notice of Removal of Civil Action
18 to Federal Court," attaching a copy of this Notice of Removal and all supporting
19 papers.

20 4. No previous application has been made for the relief requested herein.

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2 WHEREFORE, Defendants respectfully remove this action from the California
3 Superior Court for the County of San Diego to this Court pursuant to 28 U.S.C.
4 §§ 1331 and 1441.
5

6 DATED: May 8, 2015

REED SMITH LLP

7
8 By: /s/ Raagini Shah
9 Abraham J. Colman
10 Raagini Shah
11 Attorneys for Defendants
12 BANK OF AMERICA CORPORATION
13 and BANK OF AMERICA, N.A.
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